



ROSENSTEIN, FIST & RINGOLD

---

## RED BANNER UPDATE

**Date:** June 4, 2021

**Re:** HB 2862

**Signed:** April 21, 2021

**Effective:** November 1, 2021

**Topic:** Amendments to the *Public Competitive Bidding Act of 1974*

**Summary:** This Act amends multiple statutes within the *Public Competitive Bidding Act of 1974*, OKLA. STAT. tit. 61, §§ 101–139 (“*CBA*”), redefining some terms and increasing certain thresholds for public construction contracts and construction management trade contracts or subcontracts.

Amending Section 102 of the *CBA*, the Act defines “construction management trade contract or subcontract” to mean “any public construction contract exceeding fifty thousand dollars (“\$50,000”) in amount that is awarded as a trade contract in an agency construction management contract or awarded as a subcontract in an at-risk construction management contract.” It also amends the definition of “public construction contract” or “contract” to mean any such contract that exceeds one hundred thousand dollars (“\$100,000”) in amount, or any construction management trade contracts or subcontracts exceeding \$50,000.

In Section 103 of the *CBA*, the Act now requires all public construction contracts exceeding \$100,000 or construction management trade contracts or subcontracts exceeding \$50,000 be awarded to the lowest responsible bidder by open competitive bidding after solicitation of sealed bids in accordance with the *CBA*. Contracts under \$100,000 must be let and awarded to the lowest responsible bidder by written bid or awarded on the basis of competitive quotes to the lowest responsible qualified contractor, and the limit on construction contracts that can be negotiated with a qualified contractor is raised to ten thousand dollars (“\$10,000”). For other construction contracts, including minor maintenance or repair work to public school district property, equal to or greater than \$50,000 but less than \$100,000 must be let and awarded to the lowest responsible bidder by receipt of written bids. Public agencies may not let or award a public construction contract exceeding \$100,000 or a construction management trade contract or subcontract over \$50,000 to any contractor affiliated with a purchasing



cooperative, unless the cooperative and contractor have complied with all of the provisions of the *CBA*, including, but not limited to, open competitive bidding after solicitation for sealed bids. Nor shall such agency let or award a public construction contract exceeding \$10,000 up to \$100,000 to any contractor affiliated with a purchasing cooperative, unless they have complied with all of the provisions of the *CBA*, including submission of a written bid upon notice of competitive bidding. A purchasing cooperative and its affiliated contractors may not bid on any public construction contract exceeding \$50,000 unless they have complied with all of the provisions of the *CBA*, including, but not limited to open competitive bidding after solicitation of sealed bids. Nor shall such cooperative and its affiliated contractors be allowed to bid on a public construction contract exceeding five thousand dollars (“\$5,000”) unless they have complied with all of the provisions of the *CBA*, including submission of a written bid upon notice of open competitive bidding.

The Act amends Section 103.7 of the *CBA* regarding public notice of contract award proposals by now requiring such notice to be sent to one in-state trade or construction publication for their use and information whenever the estimated cost of the public construction contract exceeds \$100,000 or the cost of the construction management trade contract or subcontract exceeds \$50,000. The Act also amends Section 107 to now require a bidder on a public construction contract exceeding \$100,000 or a construction management trade contract or subcontract exceeding \$50,000 to accompany the bid with the required inclusions already set forth in Section 107 (e.g., certified check, irrevocable letter of credit, etc.). Section 113 of the *CBA* is amended to require the contractor for public contracts exceeding \$100,000 or construction management trade contracts or subcontracts exceeding \$50,000 to provide the awarding public agency with the bonds or irrevocable letter of credit and public liability and workers’ compensation insurance required under Section 113.

In Section 119.1 of the *CBA*, the Act now permits governing bodies, in the event that no timely bid is received after bid notices are published for a contract that does not exceed \$100,000 or on any proposed construction management trade contract or subcontract that does not exceed \$50,000, to direct their employees or agents to negotiate the contract with a prospective contractor, provided the public construction contract awarded may not exceed \$100,000, nor may the amount of a construction management trade contract or subcontract exceed \$50,000. Finally, the Act amends Section 130 of the *CBA* by providing that for contracts awarded under emergency authority declared by a public agency’s governing body, to which the *CBA*’s references to notice and bids will not apply, the upper limit for those contracts shall be less one hundred and fifty thousand dollars (\$150,000.00).

Please visit the firm’s website to view the signed Act.

RFR attorneys are reviewing this legislation and will be advising clients as to any recommended changes to existing district policies.